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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/385,489
Filing Date: August 30, 1999
Appellant(s): SULLIVAN ET AL.

MAILED

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GROUP 3600

Adam H. Masia
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/02/2006 appealing from the Office action

mailed 09/26/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner, which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal: On May 19, 2004, the Board of Patent Appeals and Interferences issued a Decision on Appeal on this Application.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,832,458   JONES   11-1998

5,056,019   SCHULTZ   10-1991

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-32, 37-83 and 88-94 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Jones (US 5,832,458) in view of Schultz (US 5,056,019).

As per claims 1, 47, 68, 74, 88 and 89, Jones teaches:

A method for an independent system operator to administer a trade promotion for

a product involving a manufacturer and a retailer having at least one store with an in-

store POS system, said method comprising the steps of the independent system

operator:

before a start of the trade promotion by the retailer, capturing terms of the trade

promotion at least including promoted product identification (see Jones column 4, lines

40-67; column 11, lines 20-67) at least one of (a) a predetermined payment value the

manufacturer will owe the retailer for each promoted product sold by the retailer during

the trade promotion, and (b)a predetermined payment value the manufacturer will owe

the retailer for conducting the trade promotion (see Jones column 12, lines 1-11);

before the start of the trade promotion by the retailer, storing the captured terms

of the trade promotion in an independent system operator database (see Jones column

4, lines 40-67; column 11, lines 20-67 – column 12, lines 1-40);

after the start of the trade promotion by the retailer, collecting from the retailer

product POS data from, at least one in-store POS system of the retailer (see Jones

column 12, lines 11-40);

filtering the product POS data using the promoted product identification stored in

the independent system operator database to obtain promoted product POS data (see

Jones column 12, lines 10-40);

Jones does not expressly mention "promoted product identification and

predetermined payment value", but in lines 14-40 of column 12 Jones teaches that by

crafting the promotion contract around performance goals evidenced by incremental

sales volume increases, and having recourse to a valid third party audit of the

performance achieved, both retailer and manufacturer have a clear and current factual

record to use in resolving payment disputes. An audit, according to Jones, materially

reduces the current cost for both retailers and manufacturers to track, collate, and

transmit data on performance. As a result, a prompt and accurate settlement between

the parties materially reduces the cost of resolving the disputes fostered by the current

process. Therefore, it would be inherent to track the performance that would help

manufacturers determine how much money they owed to the retailers. Manufacturers

would have to know the products that are in promotion and the payment value of said

product because these items are essential to make such determination.

Jones teaches processing the promoted product POS data in accordance with at

least one of the stored (a) a predetermined payment value the manufacturer will owe

the retailer for each promoted product sold by the retailer during the trade promotion,

and the stored (b) predetermined payment value the manufacturer will owe the retailer

for conducting the trade promotion to determine an amount of money the manufacturer

owes to the retailer for the trade promotion (see Jones column 4, lines 41-67; column

12, lines 10-40). Jones fails to teach facilitating the manufacturer's payment of the

amount of money owed to the retailer for the trade promotion or that the independent

system operator performs this settlement. However, Schultz teaches a central

management firm (i.e. independent system operator) which audits and tracks all POS

data obtained from retail stores to settle all rewards promotions between retailers and

manufacturers. Schultz uses the purchase records obtained from the POS data to

prepare reports that are sent to manufacturers and retailers (see Schultz column 8, lines

7-25). Schultz further uses the redemption records to determine the redemption amount

for reimbursing retailers and uses the purchase record to bills the manufacturers for

those rewards earned and paid to consumers (see Schultz column 9, lines 5-12; column

10, lines 35-42). Therefore, it would have been obvious to a person of ordinary skill in

the art at the time the application was made, to know that Schultz's central management

firm (i.e. independent system operator) would store the Jones manufacturers'

promotions in said firm central database (see Jones column 12, lines 1-11; see Schultz

column 6, lines 13-20) and would audit and track all POS transactions from participating

retailers to empirically determine what is the established (normal) sales volume for a

particular product and independently documents any incremental sales volume increase

to support the promotion settlement process (see Jones column 12, lines 12-25).

Schultz would use said audit to create a report that would be sent to manufacturers and

retailers (see Jones column 12, lines 20-25; Schultz column 8, lines 12-16) and would also take care of the settlement process by reimbursing retailers (see Schultz column 10, lines 35-45) and invoicing manufacturers (see Schultz column 9, lines 5-15). The Jones' system would be motivated to allow the independent system operator (i.e. audit system processor; see Jones column 12, lines 12-25; "central management firm" see Schultz column 9, lines 7-12) to perform all the settlement between manufacturers and retailers (see Schultz column 9, lines 1-15; column 10, lines 35-44) in order to make said system more fraud proof because said manufacturers would not have to worry that said retailers would deduct more money from checks paid by said retailers to said manufacturers and said retailers would not have to worry that said manufacturers would not reimburse them for said promotion because the independent system operator would take care of all the invoicing and reimbursing between the parties.

As per claim 2, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the, independent system operator database to independently verify the terms of the trade promotion (see Jones column 11, lines 20-67 – column 12, lines 1-40).

As per claim 3, Jones teaches:

The method of Claim 1, which further includes the steps of the independent system operator: enabling the retailer to change the terms of the trade promotion prior to the start of the trade promotion, capturing the changed terms of the trade promotion

and storing the captured changed terms of the trade promotion in the independent system operator database (see Jones column 11, lines 20-67 – column 12, lines 1-40).

As per claim 4, Jones teaches:

The method of Claim 3, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent, system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion (see column 11, lines 20-67 – column 12, lines 1-40).

As per claim 5, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the number of promoted products sold during the trade promotion (see Jones column 12, lines 10-40).

As per claim 6, Jones teaches:

The method of Claim 5, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 10-40).

As per claim 7, Jones teaches:

The method of Claim 6, wherein the retailer and manufacturer use an internet to access the stored terms of the trade promotion in the independent system operator

database, the number of promoted products sold during the trade promotion and the

amount of money the manufacturer owes to the retailer for the trade promotion (see

Jones column 6, lines 53-67).

As per claim 8, Jones teaches:

The method of Claim 1, wherein the step of storing the captured terms of the

trade promotion includes storing the terms of the trade promotion in at least one

predefined table in the independent system operator database (see Jones column 10,

lines 58-63).

As per claim 9, Jones teaches:

The method of Claim 8, wherein the step of storing the captured terms of the

trade promotion includes creating a UPC lists for the promoted products (see Jones

column 5, lines 52-64).

As per claim 10, Jones teaches:

The method of Claim 9, wherein the step of storing the captured terms of the

trade promotion includes generating a complete UPC code list of all of the UPC codes

offered by the manufacturer (see Jones column 10, lines 19-30).

As per claim 11, Jones teaches:

The method of Claim 10, wherein the step of storing the captured terms of the

trade promotion includes selecting additional products being promoted from the

complete UPC code list (see Jones columns 11 and 12).

As per claim 12, Jones teaches:

The method of Claim1, wherein the retailer has a plurality of stores with in-store POS systems and the step of collecting the product POS data includes collecting product POS data from the plurality of stores and consolidating all of the collected product POS data (see Jones column 6, lines 11-67).

As per claim 13, Jones teaches:

The method of Claim 12, wherein the step of filtering the product POS data includes the step of generating a table of UPC codes for products active in the trade promotion (see Jones column 8, lines 43-67).

As per claim 14, Jones teaches:

The method of Claim 12, wherein the step of filtering the product POS data includes the step of comparing the product POS data to the table of UPC codes to obtain the promoted product POS data (see Jones column 6, lines 27-52).

As per claim 15, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator verifying that the promoted product POS data is within acceptable tolerances (see Jones column 5, lines 51-64).

As per claim 16, Jones teaches:

The method of Claim 15, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of the trade promotion with product POS data for the same product for a period prior to the beginning of the trade promotion (see Jones column 12, lines 10-40).

As per claim 17, Jones teaches:

The method of Claim 1, wherein processing the promoted product POS data in accordance with the stored terms of, the trade promotion in the independent system operator database includes creating at least one, settlement table in the independent system operator database which includes the number of promoted products sold by the retailer during the trade promotion, discounts given to consumers on the promoted products during the trade promotion, and the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 10-40).

As per claim 18, Jones teaches:

The method of claim 1, but fails to teach wherein the step of facilitating the manufacturer's payment to the retailer includes paying the retailer using an electronic fund transfer. However, Official Notice is taken that it is old and well known in the business art to pay invoices using an electronic fund transfer. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Jones would use the Schultz's independent system operator to settle all transactions between retailers and manufacturers by reimbursing retailers using an electronic fund transfer. Jones would be motivated to include in its system the settlement of transactions between parties using electronic fund transfer in order to expedite said settlement and save time and money in comparison to performing the settlement by mailing invoices and checks.

As per claim 19, Jones teaches:

The method of Claim 1, but fails to teach wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator:

sending an invoice to the manufacturer for payment, collecting the money the manufacturer owes to the retailer and paying the retailer the amount of money owed to the retailer. However, the same argument made in claim 1 is made in claim 19.

As per claim 20, Jones teaches:

The method of Claim 1, but fails to teach wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator sending notices to the retailer and the manufacturer of the amount of money owed by the manufacturer to the retailer, the retailer deducting the amount of money from a manufacturer invoice and identifying the manufacturer invoice number and the deduction to the manufacturer. However, the same argument made in claim 1 is made in claim 20.

As per claim 21, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see Jones columns 11 and 12).

As per claim 22, Jones teaches:

The method of Claim 21, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see Jones column 6, lines 27-52).

As per claim 23, Jones teaches:

A system for enabling an independent system operator to administer a trade promotion for a promoted product involving a manufacturer and a retailer having at least one store with an in-store POS system, said system comprising:

means for the independent system operator to capture and store before a start of the trade promotion by the retailer the terms of the trade promotion for the promoted product at least including promoted product identification (see <u>Jones</u> column 4, lines 40-67 – column 11, lines 20-67) at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion (see <u>Jones</u> column 12, lines 1-11);

means for the independent system operator to collect from the retailer product POS data from at least one in-store POS system of the retailer (see <u>Jones</u> column 12, lines 11-40);

after the start of the trade promotion by the retailer means for the independent system operator to filter the product POS data using the promoted product identification to obtain promoted product POS data for the promoted product (see <u>Jones</u> column 12, lines 10-40);

<u>Jones</u> does not expressly mention "promoted product identification and predetermined payment value". However, the same argument made regarding this limitation in claim 1 is also made in claim 23.

means for the independent system operator to determine the amount of money the manufacturer owes to the retailer based on the promoted product POS data and at

least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion (see Jones column 4, lines 41-67; column 12, lines 10-40) but fails to teach and means for the independent system operator to pay the retailer the amount of money determined by the independent system operator to be owed to the retailer by the manufacturer for the trade promotion. However, the same argument made in claim 1 regarding this limitation is made in claim 23.

As per claim 24, Jones teaches:

The system of claim 23, wherein the retailer has a plurality of stores with in-store POS systems and the collection means collects product POS data from the plurality of retailer stores and consolidates the product POS data into a consolidated file for transfer to the filtering means (see Jones column 12, lines 10-40).

As per claim 25, Jones teaches:

The system of Claim 24, wherein the filtering means includes means for the independent system operator to compare the product POS data to a list of UPC for the trade promotion to obtain the promoted product POS data (see Jones column 8, lines 40-67).

As per claim 26, Jones teaches:

The system of Claim 24, wherein the filtering means includes means for comparing the product POS data to a list of UPC's for the promotion to obtain the promoted product POS data (see Jones column 12, lines 10-40).

As per claim 27, <u>Jones</u> teaches:

The system of Claim 23, which further includes means for the independent system operator to report the promoted product POS data to the retailer and the manufacturer (see <u>Jones</u> column 12, lines 10-40).

As per claim 28, <u>Jones</u> teaches:

The system of Claim 27, wherein the reporting means reports the promoted product POS data via the Internet (see <u>Jones</u> column 6, lines 52-67).

As per claim 29, <u>Jones</u> teaches:

The system of Claim 23, wherein the determining means consolidates the promoted product POS data for a plurality of products for the manufacturer (see <u>Jones</u> column 12, lines 10-40).

As per claim 30, <u>Jones</u> teaches:

A method for an independent system operator to administer a plurality of trade promotions for products involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

before a start of the trade promotions by the retailer, storing the terms of the trade promotions at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the

trade promotion in an independent system operator database (see Jones column 4, lines 40-67; column 11, lines 20-67);

before a start of the trade promotions by the retailer, providing the retailer and manufacturer access to the independent system operator database to independently verify the terms of the trade promotions (see Jones column 12, lines 10-40);

after the start of the trade promotions by the retailer, collecting from the retailer the product POS data during the trade promotions from at least one in store POS system of the retailer (see Jones column 12, lines 11-40);

filtering the product POS database on the stored promoted product identification to obtain promoted product POS data (see Jones column 12, lines 11-40);

storing the promoted product POS data in the independent system operator database (see Jones column 12, lines 10-40);

Jones does not expressly mention "promoted product identification and predetermined payment value", but in lines 30-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help

manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the predetermined payment value because these items are essential to make such determination.

determining an amount of money the manufacturer owes to the retailer based on the promoted product POS data and at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion stored in the independent system operator database (see Jones column 12, lines 1-25);

storing the amount of money the manufacturer owes the retailer in the independent system operator database (see Jones column 12-25);

after a start of the trade promotions by the retailer providing the retailer and manufacturer access to the independent system operator database during the conduct of the trade promotions to determine at least a portion of the amount of money the manufacturer owes the retailer for the trade promotion (see Jones column 12, lines 10-25) but fails to teach facilitating payment to the retailer of the amount of money determined to be owed to the retailer by the manufacturer. However, the same argument made in claim 1 regarding this limitation is made in claim 30.

As per claim 31, Jones teaches:

The method of Claim 30, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see Jones columns 11-12).

As per claim 32, Jones teaches:

The method of Claim 31, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see Jones column 6, lines 27-52).

As per claim 37, Jones teaches:

A system for administering a trade promotion for a promoted product between a retailer and a manufacturer, said system comprising:

an independent system having a processor and an electronic database accessible by the processor which are adapted to, before a start of the trade promotion by the retailer capture and store the terms of the trade promotion for the promoted product at least including promoted product identification (see Jones column 4, lines 40-67; column 11, lines 20-67) and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion after the start of the trade promotion by the retailer (see Jones column 12, lines 10-25);

to collect from the retailer promoted product POS data for the promoted product of the trade promotion from the retailer (see Jones column 12, lines 11-40);

to process the collected promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) predetermined payment value the manufacturer will owe the retailer for conducting

the trade promotion in the electronic database(see <u>Jones</u> column 4, lines 40-67; column 12, lines 10-40);

to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see <u>Jones</u> column 12, lines 12-30); and

a retailer system in communication with the independent system, having a processor adapted to after the start of the trade promotion by the retailer, collect promoted product POS data for the promoted product from a plurality of retailer stores, to consolidate the promoted product POS data, and to transfer the promoted product POS data for the trade promotion to the independent system (see <u>Jones</u> column 12, lines 10-40); and

a manufacturer system in communication with the independent system (see <u>Jones</u> column 11, lines 20-67 – column 12, lines 1-40).

<u>Jones</u> does not expressly mention "promoted product identification and predetermined payment value", but in lines 30-40 of column 12 <u>Jones</u> teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help

manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the predetermined payment value because these items are essential to make such determination. Jones does not teach that the independent system operator is doing the settlement. However, the same argument made in claim 1 regarding this limitation is made in claim 37.

As per claim 38, Jones teaches:

The system of Claim 37, wherein the independent system is adapted provide the retailer system and the manufacturer system access to the independent system electronic database to independently verify the stored terms of the trade promotion (see Jones column 12, lines 1-40)

to determine the number of promoted products sold during the trade promotion and to determine the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 1-40).

As per claim 39, Jones teaches:

The system of Claim 38, wherein the independent system provides the manufacturer system and the retailer system access to the independent system through the internet (see Jones column 6, lines 53-67).

As per claim 40, Jones teaches:

The system of Claim 37, wherein the independent system is adapted to generate a table of UPC codes that are active in the trade promotion and to transfer said table of UPC codes to the retailer system (see Jones column 5, lines 51-64 and column 12, lines 1-40).

As per claim 41, Jones teaches:

The system of Claim 40, wherein the retailer system is adapted to collect product POS data for all of the products the retailer sells and to use the table of UPC codes to filter the product POS data to obtain promoted product POS data for the promoted product (see Jones column 12, lines 1-40).

As per claim 42, Jones teaches:

The system of Claim 37, wherein the independent system is adapted to verify that the promoted product POS data for the promoted product is within acceptable tolerances for the promoted product (see Jones column 12, lines 1-40).

As per claim 43, Jones teaches:

The system of Claim 37, wherein the independent system is adapted to consolidate all of the promoted product POS data for a plurality of promoted products for the manufacturer (see Jones columns 11-12).

As per claim 44, Jones teaches:

The system of Claim 43, wherein the independent system is adapted to process the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see Jones column 6, lines 26-67).

As per claim 45, Jones teaches:

The method of Claim 1, wherein the step of collecting product POS data from at least one in-store POS system of the retailer includes receiving product POS data from a retailer network after the retailer network receives the product POS data from the in-store POS system of at least one retailer store (see Jones column 12, lines 1-40).

As per claim 46, <u>Jones</u> teaches:

The method of Claim 1, wherein the retailer has a plurality of retailer stores with in-store POS system, and wherein the step of collecting product POS data from at least one in-store POS system of the retailer includes receiving product POS data from a retailer network after the retailer network receives the product POS data from the in-store POS systems in said plurality of retailer stores (see <u>Jones</u> column 6, lines 27-53).

As per claim 48, <u>Jones</u> teaches:

The method of Claim 47, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion (see <u>Jones</u> columns 11-12).

As per claim 49, <u>Jones</u> teaches:

The method of Claim 47, which further includes the step of the independent system operator: enabling the retailer to change the stored terms of the promotion prior to the start of the trade, promotion, capturing the changed terms of the trade promotion and storing the changed terms of the trade promotion in the independent system operator database (see <u>Jones</u> columns 11 and 12).

As per claim 50, <u>Jones</u> teaches:

The method of Claim 49, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to

independently verify the terms of the trade promotion and to determine if the retailer

changed the terms of the trade promotion (see Jones columns 11 and 12).

As per claim 51, Jones teaches:

The method of Claim 47, which further includes the step of the independent

system operator enabling the retailer and the manufacturer to access the processed

promoted product POS data to determine the number of the promoted products sold

during the trade promotion (see Jones column 12, lines 1-40).

As per claim 52, Jones teaches:

The method of Claim 51, which further includes the step of the independent

system operator enabling the retailer and the manufacturer to access the processed

promoted product POS data to determine the amount of money the manufacturer owes

to the retailer for the trade promotion (see Jones column 12, lines 12-30).

As per claim 53, Jones teaches:

The method of Claim 52, wherein the retailer and manufacturer use an internet to

access the stored terms of the trade promotion in the independent system operator

database, the number of promoted products sold during the trade promotion and the

amount of money the manufacturer owes to the retailer for the trade promotion (see

Jones column 12, lines 1-40 and column 6, lines 53-67).

As per claim 54, Jones teaches:

The method of Claim 47, wherein the step of storing the captured terms of the

trade promotion includes storing the terms of the trade promotion in at least one

predefined table in the independent system operator database (see <u>Jones</u> column 12, lines 1-40).

As per claim 55, <u>Jones</u> teaches:

The method of Claim 54, wherein the step of storing the captured terms of the trade promotion includes creating a UPC lists for the promoted products (see <u>Jones</u> column 5, lines 50-64).

As per claim 56, <u>Jones</u> teaches:

The method of Claim 55, wherein the step of storing the captured terms of the trade promotion includes generating a complete UPC code list of all of the UPC codes offered by the manufacturer (see <u>Jones</u> column 6, lines 26-52 and column 12, lines 1-40).

As per claim 57, <u>Jones</u> teaches:

The method of Claim 56, wherein the step of storing the captured terms of the trade promotion includes selecting additional products being promoted from the complete UPC code list (see <u>Jones</u> column 6, lines 26-52 and column 12, lines 1-40).

As per claim 58, <u>Jones</u> teaches:

The method of Claim 47, wherein the retailer has a plurality of stores with in-store POS systems and the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from the plurality of stores (see <u>Jones</u> column 12, lines 1-40).

As per claim 59, <u>Jones</u> teaches:

The method of Claim 58, wherein the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from a retailer network after the retailer network receives the promoted product POS data from the plurality of stores (see Jones column 12, lines 1-40).

As per claim 60, Jones teaches:

The method of Claim 47, which further includes the step of the independent system operator verifying that the promoted product POS data is within acceptable tolerances (see Jones column 12, lines 1-40).

As per claim 61, Jones teaches:

The method of Claim 60, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of the trade promotion with product POS data for the promoted product for a period prior to the beginning of the trade promotion (see Jones column 12, lines 1-40).

As per claim 62, Jones teaches:

The method of Claim 60, wherein processing the promoted product POS data in accordance with the terms of the trade promotion includes creating at least one settlement table in the independent system operator database which includes the number of promoted products sold by the retailer during the trade promotion, discounts given to consumers on the promoted products during the trade promotion, and the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 5, lines 52-64 and column 12, lines 1-40).

As per claim 63, Jones teaches:

The method of Claim 47, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator paying the retailer using an electronic funds transfer. The same rejection applied to claim 18 is applied to claim 63.

As per claim 64, <u>Jones</u> teaches:

The method of Claim 47, but fails to teach wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator: sending an invoice to the manufacturer for payment, collecting the money the manufacturer owes to the retailer and paying the retailer the amount of money owed to the retailer. However, the same argument made in claim 1 regarding this limitation is made in claim 64.

As per claim 65, <u>Jones</u> teaches:

The method of Claim 47, but fails to teach wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator sending notices to the retailer and the manufacturer of the amount of money owed by the manufacturer to the retailer, the retailer deducting the amount of money from a manufacturer invoice and identifying the manufacturer invoice number and the deduction to the manufacturer. However, the same argument made in claim 1 regarding this limitation is made in claim 65.

As per claim 66, <u>Jones</u> teaches:

The method of Claim 47, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see <u>Jones</u> columns 11-12).

As per claim 67, <u>Jones</u> teaches:

The method of Claim 66, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see <u>Jones</u> columns 11-12).

As per claim 69, <u>Jones</u> teaches:

The system of Claim 68, wherein the retailer has a plurality of stores with in-store POS systems and a retailer network which collects product POS data from the plurality of in-store POS systems in the plurality of stores and filters the consolidated product POS data to obtain consolidated promoted product POS data, and wherein the collecting means is adapted to receive the consolidated promoted product POS data from the retailer network (see <u>Jones</u> column 12, lines 1-40).

As per claim 70, <u>Jones</u> teaches:

The system of Claim 68, where the determining means includes means for verifying that the promoted product POS data is within acceptable tolerances for the promoted product (see <u>Jones</u> column 12, lines 1-40).

As per claim 71, <u>Jones</u> teaches:

The system of Claim 68, which further includes means for the independent system operator to report the promoted product POS data to the retailer and the manufacturer (see <u>Jones</u> column 12, lines 1-40).

As per claim 72, <u>Jones</u> teaches:

The system of Claim 68, wherein the reporting means reports the promoted product POS data via an internet (see <u>Jones</u> column 6, lines 53-67).

As per claim 73, <u>Jones</u> teaches:

The system of Claim 68, wherein the determining means consolidates the promoted product POS data for a plurality of trade promotions, for the manufacturer and the paying means aggregates payments owed to the retailer by the manufacturer for said plurality of trade promotions (see <u>Jones</u> column 12, lines 1-40).

As per claim 75, <u>Jones</u> teaches:

The method of Claim 74, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see <u>Jones</u> columns 11-12).

As per claim 76, <u>Jones</u> teaches:

The method of Claim 75, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see <u>Jones</u> columns 11-12).

As per claim 77, <u>Jones</u> teaches:

A method for independent system operator to administer a trade promotion for a product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps the independent system operator:

before a start of the trade promotion by the retailer, capturing terms of the trade promotion including an identification of the retailer, an identification of the manufacturer,

a trade promotion type, a UPC Code for the promoted product (see Jones column 5, lines 51-64 and column 12, lines 1-40) at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion (see Jones column 12, lines 10-30). Jones fails to teach and link codes for associated discounts if the trade promotion is an electronic discount trade promotion storing said captured terms of the trade promotion in an independent system operator database. However, Schultz teaches customers cards that enable the retailer/manufacturer to issue electronic discounts to said customers at the point of sale based upon said customer card linking to promotions" (see Schultz column 8, lines 1-3; 39-41; column 4, lines 64-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Jones would use Schultz cards to enable retailers/manufacturers to issue electronic discounts to consumers at the point of sale terminal. Jones would be motivated to include customers cards that are linked to promotions in his trade promotion system in view that said cards would identify the customers which said identification would be used to better target advertisements and promotions to said customers.

Jones does not expressly mention "payment value for the promoted product". However, the same argument made in claim 1 regarding this limitation is also made in claim 77.

before the start of the trade promotion by the retailer, storing said captured terms of the trade promotion in an independent system operator database (see <u>Jones</u> column 12, lines 1-40);

after the start of the trade promotion by the retailer, receiving from the retailer promoted product POS data for said trade promotion from at least one in-store POS system of the retailer (see <u>Jones</u> column 12, lines 11-40).

processing the promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see <u>Jones</u> column 12, lines 11-40). However, <u>Jones</u> fails to teach that said independent system operator perform the settlement. However, the same argument made in claim 1 regarding this limitation is also made in claim 77.

As per claim 78, <u>Jones</u> teaches:

The method of Claim 77, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion (see <u>Jones</u> columns 11-12).

As per claim 79, <u>Jones</u> teaches:

The method of Claim 77, which further includes the step of the independent system operator: enabling the retailer to change at least one of the terms of the trade promotion prior to the start of the trade promotion, capturing the changed terms of the trade promotion and storing the captured changed terms of the trade promotion in the independent system operator database (see Jones column 12, lines 1-40).

As per claim 80, Jones teaches:

The method of Claim 79, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed any of the terms of the trade promotion (see Jones columns 11-12).

As per claim 81, Jones teaches:

The method of Claire 77, which further includes the step of consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see Jones column 11-12).

As per claim 82, Jones teaches:

The method of Claim 77, which further includes the step of processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see Jones columns 11-12).

As per claim 83, Jones teaches:

The method of Claim 77, but does not expressly teach wherein the step of capturing terms of the trade promotion further includes capturing special payment

terms. However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that special payment terms would be another trade promotion offer by retailers, the same as offering price reduction or free goods and this feature would be added to Jones system. Jones would be motivated to add special payment terms to his trade promotion system in order to attract more business to said system, as customers would have more options to receive promotions.

As per claim 90, Jones teaches:

A method for an independent system operator to administer a trade promotion for a promoted product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

before a start of the trade promotion by the retailer, capturing terms of the trade promotion for the promoted product at least including promoted product identification (see Jones column 11, lines 20-67 – column 12, lines 1-40) and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion before the start of the trade promotion by the retailer (see Jones column 12, lines 10-30);

before the start of the trade promotion by the retailer, storing the captured terms of the trade promotion in an independent system operator database (see Jones column 11, lines 20-67 – column 12, lines 1-40);

before the start of the trade promotion by the retailer, enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion (see Jones column 12, lines 10-40);

before the start of the trade promotion by the retailer, enabling the retailer to change at least one of the stored terms of the promotion prior to the start of the trade promotion, capturing any changed terms of the trade promotion and storing any changed terms of the trade promotion in the independent system operator database (see Jones column 12, lines 10-40). For a trade promotion to be activated, there has to be an agreement between retailers and manufacturers and the moment that there is a changed in the terms of said trade promotion, said change would create a new promotion with new terms.

before the start of the trade promotion by the retailer, enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion (see Jones column 11, lines 20-67 – column 12, lines 1-40);

after the start of the trade promotion by the retailer, receiving from the retailer promoted product POS data for the promoted product of the trade promotion from at least one in-store POS system of the retailer (see Jones column 12, lines 10-40);

processing the promoted product POS-data in accordance with at least one of the store (a) predetermined payment value the manufacturer will owe the retailer for

each promoted product sold by the retailer during the trade promotion, and (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system operator database (see <u>Jones</u> column 11, lines 20-67 – column 12, lines 1-40) to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 12-20) but fails to teach and facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion. However, the same argument made in claim 1 regarding this limitation is also made in claim 90.

verifying that the promoted product POS data is within acceptable tolerances (see <u>Jones</u> column 12, lines 10-40);

enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion (see <u>Jones</u> column 12, lines 10-40); and

<u>Jones</u> does not expressly mention "promoted product identification and predetermined payment value for said trade promotion". However, the same argument made in claim 1 regarding this limitation is made in claim 90.

As per claim 91, <u>Jones</u> teaches:

The method of Claim 90, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the number of the promoted products sold during the trade promotion (see <u>Jones</u> column 12, lines 1-40).

As per claim 92, <u>Jones</u> teaches:

The method of Claim 90, wherein the retailer has a plurality of stores with in-store POS systems and the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from the plurality of stores (see Jones column 6, lines 27-52 and columns 11-12).

As per claim 93, Jones teaches:

The method of Claim 92, wherein the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from a retailer network after the retailer network receives the promoted product POS data from the plurality of stores (see Jones column 6, lines 27-52 and columns 11-12).

As per claim 94, Jones teaches:

The method of Claim 90, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of the trade promotion with product POS data for the promoted product for a period prior to the beginning of the trade promotion (see Jones column 12, lines 1-40).

(10) Response to Argument

The Appellant argues that Jones does not teach using its audit system for facilitating the settlement of such non-coupon promotions or trade promotions between a retailer and a manufacturer[1]. The Examiner answers that the Schultz's reference was used to teach said limitation. Schultz teaches a central management firm (i.e. independent system operator) which audits and tracks all POS data obtained from retail stores to settle all rewards promotions between retailers and manufacturers. Schultz

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[1] Appellant's Brief page 31

uses the purchase records obtained from the POS data to prepare reports that are sent to manufacturers and retailers (see Schultz column 8, lines 7-25). Schultz further uses the redemption records to determine the redemption amount for reimbursing retailers and uses the purchase record to bills the manufacturers for those rewards earned and paid to consumers (see Schultz column 9, lines 5-12; column 10, lines 35-42).

The Appellant further argues that Jones does not expressly or inherently disclose that the Jones audit system captures or stores in its database at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion[2]. The Examiner answers that the Board of Appeal decided that sales volume of a promoted product relates to the amount of money owed by the manufacturer to the retailer for the promotion[3]. Therefore, information of sale volume can be properly construed to be "predetermined payment value" since predetermined payment value relates to the amount of money owed by the manufacturer to the retailer for the promotion.

The Appellant argues that Jones does not disclose "storing" because the Jones audit system does not need to store in its database the predetermine payment value the manufacturer will owe the retailer for conducting the trade promotion[4]. The Examiner answers that that the Board of Appeal found, "Thus, retaining the files for 52 weeks and providing reports of the files, Jones teaches a method of enabling the retailer and the

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[2] Appellant's Brief page 33

manufacturer to access the electronic database file to determine the **stored** terms of the trade promotion"[5]. Therefore, <u>Jones</u> teaches allowing manufacturers and retailers access to the independent system operator database to allow determination of amount of money owed (i.e. stored terms of the trade promotion and sales volume) to have a prompt and accurate settlement between the parties.

The Appellant argues that <u>Jones</u> does not teach or suggest that its audit system will access its database to process the promoted product POS data in accordance with at least one the stored predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion[6]. The Examiner adopts by reference the same argument made in the previous paragraph.

The Appellant argues that <u>Jones</u> acts as an audit system for separate provision and verification of the number of promoted products sold[7] , and as indicated by the 2004 Board Decision not for determining "the amount of money the manufacturer owes to the retailer for the trade promotion and facilitating the manufacturer's payment". The Examiner answers that that the Board fail to find that <u>Jones</u> teaches the previous limitation by mentioning that <u>Jones</u> clearly teaches that the reports provided are sent to the manufacturer to support the settlement process, however <u>Jones</u> does not teach that the independent system operator performs this settlement[8]. Following the Board's decision the Examiner used the <u>Schultz</u> patent to teach an independent system

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[3] Board Decision filed 05/19/2004 page 11
[4] Appellant's Brief page 34
[5] Board decision filed 05/19/2004 page 12
[6] Appellant's Brief page 34
[7] Appellant's Brief page 36
[8] Board Decision filed 05/19/04

operator (see Schultz figure 1, items 3 and 4), which performs said settlement between retailers and manufacturers in trade or non-coupon promotions.

The Appellant argues that in the Schultz reference the retailer does not provide a discount on the promoted product to the consumer associated with the Schultz marketing program. The Appellant also argues that the retailer is not owed and does not receive any payment from the manufacturer of the promoted product for the sale of the promoted product under the Schultz marketing program because according to the Appellant the retailer is not giving the consumer a discount on product and does not have a contract with the retailer to promote the product or give the consumer a discount[9]. The Examiner answers by first mentioning that the Appellant made a typographical error when refers to "not having a contract with the retailer" where it should recite not having a contract with the manufacturer. Furthermore, the Examiner uses the Jones references to teach about contracts between retailer and manufacturer and the Schultz reference to teach a third party audit system that performs the settlements between retailer and manufacturers in trade or non-coupon promotions. In addition, Schultz teaches in column 10, lines 35-45 that the retailer is reimbursed by the manufacturer for the trade promotion, and column 9, lines 7-13 teaches that the settlement is done by the third party audit system (see Schultz figure 1, item 3). In Schultz, it is inherent that the retailer has a contract with the manufacturer when Schultz teaches that participating retailers distinctively displayed the manufacturer's promotions products on the shelves of said retail store and that manufacturers' vouchers are

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[9] Appellant's Brief page 38

redeemed at participating retail store for credit toward product purchases (see Schultz column 8, lines 63-67). Therefore, it is inherent that for participating retailers to distinctively display manufacturers products and redeem manufacturers vouchers, as there must be some type of agreement between the retailers and manufacturers to honor said displaying and said redeeming.

The Appellant argues that the Schultz system does not provide payments to the retailer for the sales of the promoted products[10]. The Examiner answers that Schultz teaches in column 10, lines 35-45 that the central management firms uses the redemption records obtained from redeemed credits given to consumers obtained from purchasing promoted products to determine how much to reimburse a participating retail store. Therefore, contrary to Appellant's argument, Schultz teaches providing payments to retailers for the sale of the promoted products.

The Appellant argues that Schultz teaches that reward certificates can be a negotiable check or in a form for redemption at a participating retail store, but that said reward certificate is not tied to a purchase of a promoted product that the consumer will buy when cashing the reward certificate. Therefore, according to the Appellant, the Schultz system does not teach facilitating or paying the retailer for a discount on the purchase product, but rather simply for the cashing of a reward certificate[11]. The Examiner answers that Appellant's claims do not recite facilitating or paying the retailer for a discount on the purchase product. Appellant's claims recite, "facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade

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[10] Appellant's Brief page 38

promotion" and <u>Schultz</u> teaches in column 8, lines 15-25; column 9, lines 7-15 and column 10, lines 35-45 a system that indeed facilitates payment between manufacturers and retailers for non-coupon promotions.

The Appellant argues that <u>Schultz</u> appears to teach that promoted products in the manufacturer marketing program can be purchased at a plurality of retailers and thus, that the <u>Schultz</u> system does not teach providing payment to retailer for discounts on sales of the promoted products because a retailer that sold the consumer the promoted product may not be cashing any reward certificate for the consumer (because the consumer may cash the reward certificate at a bank or at another retailer)[12]. The Examiner answers that, even if some reward certificate may not be cashed by a retailer, other reward certificates may be cashed. Therefore, <u>Schultz</u> teaches the Appellant's claim invention of facilitating the manufacturers payment of the amount of money owed to the retailer for the trade promotions.

The Applicant argues that in <u>Schultz</u> there is no discount at the retailer point of sale so there is no need for settlement function between manufacturers and retailers for any discount given on the sale of the product. The Examiner answers that contrary to Appellant's argument, <u>Schultz</u> teaches in column 7, lines 55-60; column 8, lines 63-67 discount or credits given to consumers at a point of sale,.

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[11] Appellant's Brief page 39
[12] Appellant's Brief page 39

The Appellant argues that <u>Jones</u> does not teach an independent system operator for administering a trade promotion[13]. The Examiner answers that <u>Schultz</u> teaches an independent system operator which administers a trade or non-coupon promotion.

The Appellant argues that the <u>Schultz</u> system does not teach a central management firm which audits and tracks all POS data obtained from retail stores to settle all rewards promotions between retailers and manufacturers[14]. The Examiner answers that <u>Schultz</u> teaches in column 7, lines 55-60 that consumer is able to make reward product 28 purchases at more than one retail store and have the purchase credits combined in the PMCS and that periodically the purchase records residing in the PMCS data receiver are compared with the offer records in the offer file 6 to determine which purchases correspond to an available purchase reward offer 2. <u>Schultz</u> teaches in column 8, lines 7-10 teaches that the central management firm uses the purchase records stored in the PMCS data receiver 7 to analyze consumer purchase behavior. Column 9, lines 7-14 teaches based upon reward product invoices, the manufacturer pays the central management firm for those rewards earned and paid to consumers and column 10, lines 44-53 teach that from the redemption records, the central management firm determines the redemption amounts and reimburses the retail store. Finally the central management firm uses the reward files to prepare a report of reward items sold to send to the manufacturer. Therefore, <u>Schultz</u> teaches a central management firm which audits and tracks all POS data obtained from retail stores to settle all reward promotions between retailers and manufacturers.

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[13] Appellant's Brief page 42

The Appellant further argues that in Schultz, when a retailer redeems a reward certificate from the consumer, that retailer gets paid for the amount paid to the consumer, but such amounts are not tied, visa vis the retailer, at that point to the purchase of promoted products[15]. The Examiner answers that the amount paid to retailers for redeeming reward certificates is tied to the purchase of promoted products because said certificates are obtained by consumers as credits for purchasing promoted products (see Schultz column 7, lines 57-65; column 8, lines 64-67).

The Appellant argues that Schultz appears to be directed to the reward certificates and not toward the purchased promoted products[16]. The Examiner answers that in Schultz, the reward certificates are obtained from consumers' purchase of promoted products. The consumers received credits for purchase of promoted products and said credits are given to consumers in the form of reward certificates (see Schultz column 8, lines 56-67). Therefore, the Schultz system is directed to the purchase of promoted products.

The Appellant further argues that Schultz does not teach using the records of the purchased promoted products to determine the amounts for reimbursing retailers, but rather for providing rewards for consumers according to the offers set forth in the reward booklet. The Appellant also argues that the retailer is not paid for the purchase of the promoted products by the consumer[17]. The Examiner answers that in Schultz, the reward certificates are obtained from purchase of promoted products and retailers are

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[14] Appellant's Brief page 53
[15] Appellant's Brief page 53
[16] Appellant's Brief page 54
[17] Appellant's Brief page 54

paid for consumers that redeemed said reward certificates (see Schultz column 7, lines 45-67; column 8, lines 47-67; column 10, lines 35-45).

The Appellant argues that one of ordinary skill would not be motivated (without proper hindsight) to take one piece of Schultz and paste it into Jones audit system[18]. The Examiner answers that both Jones and Schultz system address the problem of ensuring the accurate and timely settlement between consumer, goods manufacturers and the retailers of their products when the manufacturers issues trade promotions (i.e. non-coupon promotions). Both systems teach a central audit system which creates customized reports about consumer behavior which are sent to the manufacturer and to the retailer to support the settlement process (see Jones column 12, lines 11-30; Schultz column 8, lines 6-25). Jones does not teach that the independent system operator performs all the settlement between manufacturers and retailers and for said missing limitation the Examiner used the Schultz reference. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the Application was made, to combine Jones and Schultz in this way.

The Appellant argues that the rejection of claim 77 is illogical because Schultz teaches away from providing discounts to the consumers at the retailer level[19]. The Examiner answers that Schultz provides credits to the consumers at the retailer level where said credits are redeemable for discounts of products (see Schultz column 8, lines 64-67) and where consumers presents a frequent shopper card (i.e. link code) to receive said credits (see Schultz figure 2, item 24).

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[18] Appellant's Brief page 55

The Appellant argues that the Schultz system does not compare the terms for a promoted product with monitored POS data from participating retailers to settle transactions between retailers and the manufacturers[20]. The Examiner answers that Schultz teaches in column 7, lines 60-67 that "periodically, usually weekly, the purchase records 30 residing in the PMCS data receiver 7 are compared with the offer records in the offer file 6 to determine which purchases corresponds to an available purchase reward offer 2". Therefore, Schultz compares the terms for a promoted product (i.e. offer file 6) with monitored POS data (i.e. purchase record 30) to settle transaction between retailers and the manufacturers (see Schultz column 9, lines 5-15; column 10, lines 35-45).

The Appellant argues that the Examiner did not dispute the statement in the Declaration that the Jones system for trade promotions has never been commercial successful[21]. The Examiner answers that even if the Jones trade promotion has never been commercial successful, Jones obtained a Patent which discloses trade promotions and as such, and, thus, it is a proper prior art.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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[19] Appellant's Brief page 64

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April 13, 2006

[20] Appellant's Brief page 69
[21] Appellant's Brief page 69